

HOUSE BILL NO. 151

INTRODUCED BY B. NEWMAN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE DEPARTMENT OF CORRECTIONS ONLY SUPERVISES PROBATIONERS WHO ARE FELONY OFFENDERS; CLARIFYING THAT THE DISTRICT COURT MAY ADD CONDITIONS TO OR MODIFY CONDITIONS OF PROBATION; PROVIDING A PROCEDURE FOR ADDING OR MODIFYING CONDITIONS OF PROBATION; CLARIFYING PROVISIONS RELATING TO PROBATION REVOCATION HEARINGS; PROVIDING FOR AN INFORMAL PROBATION VIOLATION INTERVENTION HEARING; AMENDING SECTIONS 46-18-111, 46-18-203, 46-23-1004, 46-23-1011, AND 46-23-1012, MCA; REPEALING SECTION 46-23-1013, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the ~~offender~~ defendant in the least restrictive environment, considering the risk the ~~offender~~ defendant presents to the community and ~~offender~~ the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the professional and occupational licensing bureau of the department of commerce. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of

1 the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.
2 (2) The court shall order a presentence report unless the court makes a finding that a report is
3 unnecessary. Unless the court makes ~~such a~~ that finding, a defendant convicted of any offense not
4 enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced
5 before a written presentence investigation report by a probation and parole officer is presented to and
6 considered by the district court. THE DISTRICT COURT MAY ORDER A PRESENTENCE INVESTIGATION FOR A DEFENDANT
7 CONVICTED OF A MISDEMEANOR ONLY IF THE DEFENDANT WAS CONVICTED OF A MISDEMEANOR THAT THE STATE
8 ORIGINALLY CHARGED AS A SEXUAL OR VIOLENT OFFENSE AS DEFINED IN 46-23-502. ~~The district court may, in its~~
9 ~~discretion, order a presentence investigation for a defendant convicted of a misdemeanor."~~

10

11 **Section 2.** Section 46-18-203, MCA, is amended to read:

12 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
13 revocation showing probable cause that the offender has violated any condition of a sentence or any
14 condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation.
15 The order must require the offender to appear at a specified time and place for the hearing and be served
16 by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest
17 warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the
18 offender before the court.

19 (2) The petition for a revocation must be filed with the sentencing court during the period of
20 suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not
21 deprive the court of its jurisdiction to rule on the petition.

22 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons
23 arrested pursuant to this section.

24 (4) Without unnecessary delay, the offender must be brought before the judge, and the offender
25 must be advised of:

26 (a) the allegations of the petition;

27 (b) the opportunity to appear and to present evidence in the offender's own behalf;

28 (c) the opportunity to question adverse witnesses; and

29 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter
30 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any lesser sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released."

Section 3. Section 46-23-1004, MCA, is amended to read:

1 **"46-23-1004. Duties of department.** The department is responsible for any investigation and

2 supervision requested by the board or the courts for felony offenders. The department shall:

3 (1) divide the state into districts and assign probation and parole officers to serve in these districts
4 and courts;

5 (2) obtain any necessary office quarters for the staff in each district;

6 (3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including
7 receipt and disbursement of money;

8 (4) direct the work of the probation and parole officers and other employees;

9 (5) formulate methods of investigation, supervision, recordkeeping, and reports;

10 (6) conduct training courses for the staff;

11 (7) cooperate with all agencies, public and private, that are concerned with the treatment or
12 welfare of persons on probation or parole;

13 (8) administer the interstate compact for the supervision of parolees and probationers; and

14 (9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted
15 of an offense involving theft from an employer."

16
17 **Section 4.** Section 46-23-1011, MCA, is amended to read:

18 **"46-23-1011. Supervision on probation.** (1) The department shall supervise ~~offenders~~ probationers
19 during their probation period in accord with the conditions set by a sentencing judge. If the sentencing
20 judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the
21 department, hold a hearing and set conditions of probation. The probationer must be present at the
22 hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

23 (2) A copy of the conditions of probation must be signed by the probationer ~~and given to the~~
24 ~~probationer and the probationer's probation and parole officer, who shall report on the probationer's~~
25 ~~progress under rules of the sentencing judge. Any probation agreement signed by the probationer may~~
26 ~~contain a clause waiving extradition. The department may require a probationer to waive extradition for~~
27 the probationer's return to Montana.

28 (3) The probation and parole officer shall regularly advise and consult with the probationer to
29 encourage the probationer to improve the probationer's condition and conduct and shall inform the
30 probationer of the restoration of rights on successful completion of the sentence.

1 (4) (a) The probation and parole officer may recommend and a judge may modify or add any
2 condition of probation or suspension of sentence at any time. ~~Notice must be given to the probation and~~
3 ~~parole officer before any condition is modified, and the officer must be given an opportunity to present the~~
4 ~~officer's ideas or recommendations on any modification.~~

5 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction
6 with a report that identifies the conditions of probation and the reason why the officer believes that the
7 judge should modify or add the conditions.

8 (c) The county attorney may file a petition requesting that the court modify or add conditions as
9 requested by the probation and parole officer.

10 (d) The court may grant the petition if the probationer does not object. If the probationer objects
11 to the petition, the court must hold a hearing pursuant to the provisions of 46-18-203.

12 (e) The provisions of 46-18-203(7)(a)(ii) do not apply to this section.

13 (f) A The probationer shall sign a copy of a modification of new or modified conditions must be
14 delivered to the probation and parole officer and the probationer. Waiver or modification of probation. The
15 court may waive or modify a condition of restitution may be ordered only as provided under the provisions
16 of in 46-18-246.

17 ~~(5) The probation and parole officer shall keep records as the department or the sentencing judge~~
18 ~~may require.~~

19 ~~(6)~~(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally
20 discharge a probationer from supervision before expiration of the probationer's sentence if:

21 (i) the judge determines that a conditional discharge from supervision:

22 (A) is in the best interests of the probationer and society; and

23 (B) will not present unreasonable risk of danger to the victim of the offense; and

24 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

25 (b) Subsection ~~(6)(a)~~ (5)(a) does not prohibit a judge from revoking the order suspending execution
26 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been
27 conditionally discharged from supervision.

28 (c) If the department certifies to the sentencing judge that the workload of a district probation and
29 parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge
30 may not place an offender on probation under supervision by that district office unless the judge grants

1 a conditional discharge to a probationer being supervised by that district office. The department may
2 recommend probationers to the judge for conditional discharge. The judge may accept or reject the
3 recommendations of the department. The department shall determine the optimum workload for each
4 district probation and parole office."

5
6 **Section 5.** Section 46-23-1012, MCA, is amended to read:

7 **"46-23-1012. Arrest when violations of probation alleged -- probation compliance plan -- probation**
8 **violation ~~prison diversion program intervention~~.** (1) At any time during probation ~~or suspension of sentence,~~
9 ~~if a probation and parole officer reasonably believes that the probationer has violated a condition of~~
10 ~~probation,~~ a court ~~or the probation and parole officer~~ may issue a warrant for the arrest of the ~~defendant~~
11 ~~for violation of any of the conditions of release~~ probationer or a county attorney may issue a notice to
12 appear to answer to a charge of probation violation. The notice must be personally served upon the
13 ~~defendant~~ probationer. The warrant must authorize ~~all law enforcement~~ officers ~~named in the warrant~~ to
14 return the ~~defendant~~ probationer ~~to the custody of the court or to any suitable detention facility designated~~
15 ~~by the court center.~~

16 (2) Any probation and parole officer may arrest the ~~defendant~~ probationer without a warrant or
17 may orally deputize any other officer with power of arrest to do so by giving the officer oral authorization
18 and within 12 hours delivering to the ~~place of~~ detention center a written statement setting forth that the
19 ~~defendant~~ probationer has, in the judgment of the probation and parole officer, violated the conditions of
20 ~~the defendant's release~~ probation. A written statement or oral authorization delivered with the ~~defendant~~
21 probationer by the arresting officer to the official in charge of a ~~county~~ detention center ~~or other place of~~
22 ~~detention~~ is sufficient warrant for the detention of the ~~defendant~~ probationer if the probation and parole
23 officer delivers the written statement within 12 hours of the ~~defendant's~~ probationer's arrest. The
24 probation and parole officer, after making an arrest, shall present to the detaining authorities a similar
25 statement of the circumstances of violation.

26 ~~(3) Provisions regarding release on bail of a person charged with a crime are applicable to the~~
27 ~~defendants arrested under these provisions.~~

28 ~~—— (4) Any probation and parole officer may hold a defendant arrested under subsection (1) without~~
29 ~~bail for 72 hours. After the arrest of the defendant pursuant to this subsection, a hearings officer for the~~
30 ~~probation and parole bureau shall hold a hearing within 36 hours of the defendant's arrest. The hearings~~

~~officer shall determine whether there is probable cause to believe that the defendant has violated a condition of probation and, if probable cause exists, notify the sentencing court and determine an appropriate plan to ensure the defendant's compliance with the conditions of probation. An appropriate plan may include:~~

~~—— (a) holding the defendant for a period of time up to 30 days, with credit for any time served from the time of the arrest to the time of the hearing to determine probable cause;~~

~~—— (b) a request to the court pursuant to 46-23-1011 to modify the defendant's terms or conditions of probation; or~~

~~—— (c) a notification to the court with jurisdiction over the defendant pursuant to 46-23-1013.~~

~~(5) The department shall adopt policies and procedures to implement a probation violator prison diversion program. If the department is able to sufficiently sanction a defendant with a term in a detention center as provided in subsection (4)(a) for a proven technical violation that could result in the revocation of a suspended or deferred sentence, the department may pay the expense of the detention center costs and pursue payment of costs by the defendant as provided in 7-32-2245. If the action plan developed for the defendant proceeds as provided in subsection (4)(b) or (4)(c), the expenses of the detention must be paid as provided in 7-32-2242.~~

(3) A probation and parole officer may authorize a detention center to hold a probationer arrested under this section without bail for 72 hours. Within 72 hours following the probationer's detention, the probation and parole officer shall:

(a) authorize the detention center to release the probationer;

(b) hold an intervention hearing pursuant to [section 6]; or

(c) arrange for the probationer to appear before a magistrate to set bail. In setting bail, the provisions of chapter 9 of this title regarding release on bail of persons charged with a crime apply.

(4) If the probationer is detained and bond is set, the probation and parole officer shall file a report of violation within 10 days of the arrest of the probationer.

(5) After the probation and parole officer files a report of violation, the court may proceed with revocation of probation in the manner provided in 46-18-203."

NEW SECTION. Section 6. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation may initiate

1 an informal probation violation intervention hearing to gain the probationer's compliance with the
2 conditions of probation without a formal revocation hearing under 46-18-203.

3 (2) A hearings officer designated by the department shall conduct the intervention hearing.

4 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
5 violated a condition of probation, the hearings officer may order the probationer to serve up to 30 days
6 in a county detention center, WITH CREDIT FOR TIME SERVED SINCE THE TIME OF ARREST, and order the probationer
7 to pay the costs of incarceration. The department shall pay the incarceration costs not paid by the
8 probationer.

9 (4) The provisions of chapter 9 of this title regarding release on bail of a person charged with a
10 crime are not applicable to a probationer ordered to be held in a county detention center under this section.

11

12 NEW SECTION. **Section 7. Repealer.** Section 46-23-1013, MCA, is repealed.

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14 NEW SECTION. **Section 8. Codification instruction.** [Section 6] is intended to be codified as an
15 integral part of Title 46, chapter 23, part 10, and the provisions of Title 46 apply to [section 6].

16

17 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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19 NEW SECTION. **Section 10. Retroactive applicability.** [This act] applies retroactively, within the
20 meaning of 1-2-109, to offenders who are under the custody or supervision of the department of
21 corrections on [the effective date of this act].

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